

# Crafting Environmental Policy in the Teeth of Possessive Individualism: Whose Land is It?<sup>1</sup>

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## Abstract

Whether focused on the Endangered Species Act, a developer's plans for a shopping mall on wetlands, or the desire of a city council to influence the nature and content of its urban space, land is the locus of the struggle between possessive individualism and the larger political interest in how our shared landscapes shall evolve. Those who celebrate the alleged sanctity of "property rights" and so-called "free-market environmentalism" are quite sure that they hold the trump card in this fight. In contrast, those who see the legal foundations of capitalism as an evolutionary process will insist that time is on their side. I will argue here that the evolutionary view is the more plausible one to believe. In short, possessive individualism is a losing strategy with respect to land.

## I. Introduction

I am interested here in exploring the idea of land in the American experience. This requires that we pay careful attention to the meaning that land holds for us. And if we are to understand the meaning of land we are required to come to grips with the concept of land. It is important to understand that these multiple aspects are not unique to land. Gravity is at once an idea (an awareness of weight), a concept (in physics an exact formal expression), and gravity also holds a rather practical meaning for us (be careful handling that fragile vase). We see that there are multiple aspects of everyday words. And words matter for the simple reason that "Grasping a concept is mastering the use of a word [Brandom, 2000, p. 6]."

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My title also includes the term possessive individualism. This term is an idea in the American experience (the autonomous individual in pursuit of happiness), a concept in political philosophy (one of the foundations of our struggle for independence from England), and it holds a precise practical meaning (this land is mine, and no one will tell me what I can and cannot do on it—or with it).

I shall here connect the multiple notions of land with the multiple notions of possessive individualism. I want to do this for two reasons. First, at the theoretical level, it is good for us to think deeply about the ideas, the concepts, and the meanings in our professional lives. To paraphrase Socrates, the unexamined disciplinary life is not worth living. But I am also interested in the theoretical for the simple reason that there is nothing quite as useful as a good theory. I do not mean “theory” in the sense that this word is now understood in economics—as a family of equations, most of which, though not all, follow intuitively from their predecessor. By theory I mean an account—a set of if-then propositions that connect premises to empirical claims to practical implications. That too must be understood as theory.

Second, at the practical level, our political culture is now deeply fractured along a number of fronts. And one of the major fault lines in contemporary political climate concerns land. I am interested in the practical side of this issue because Phil Raup was an eminently practical scholar, and because only practical things have value in our world. So I shall blend the theoretical and the practical as we proceed to work out an answer to the question: whose land is it, anyway?

I will bring two distinct theoretical traditions to bear on this challenge. The first tradition, now enjoying a serious renaissance in philosophy, is that of pragmatism. The second tradition, also enjoying a bit of a renaissance, is that of evolutionary economics. I will discuss

how pragmatism liberates economics from its dependence on the flawed deductive epistemology of positivism. And I will discuss how pragmatism is both necessary and sufficient for economics to become a truly evolutionary social science. With that realization in hand we will be in a position to discuss the crafting of an innovative environmental policy that can trump the static vision of land (as idea, as concept, and as meaning) embodied in the tradition of possessive individualism at the core of the American experience.

## II. On Possessive Individualism

In 1879, commenting on the Industrial Revolution, Matthew Arnold wrote that: “Inequality has the natural and necessary effect, under the present circumstances, of materializing our upper class, vulgarizing our middle class, and brutalizing our lower class [Arnold, 1879].” Following in Arnold’s footsteps, in 1920 the English historian R.H. Tawney wrote that England had become a grotesque acquisitive society [1920]. This individualism did not start with the Industrial Revolution—that is, it was not brought on by, caused by, the sudden emergence of new wealth between 1750 and 1850. Rather, the historian Alan Macfarlane has suggested that the origins of English individualism can be traced as far back as the 14<sup>th</sup> century [Macfarlane, 1978]. These enduring strands of individualism, acquisitiveness, and vulgar materialism were woven together in 1954 by the political philosopher C .B. Macpherson who coined the phrase possessive individualism [Macpherson, 1964]. Indeed, Macpherson suggests that possessive individualism comprised the dominant unifying assumption—the primary organizing idea—of English society in the 17<sup>th</sup>-19<sup>th</sup> centuries [Macpherson, 1964]. And where does one look for the animating ideas and principles of post-independence America? That would be England in the 17<sup>th</sup>-19<sup>th</sup> centuries.

As we ponder land and environmental policy, the issue turns not so much on how we characterize contemporary American society, as it does how we situate the individual in that society. Macpherson suggests that the dilemma for 20<sup>th</sup> century political thought—to say nothing of political thought in the 21<sup>st</sup> century—concerns working out the inevitable tension between a theory of individual rights so central to the utilitarianism of Hobbes and Locke, and the notion of obligation of the individual to the modern state. Restated, how can we reconcile the individual embedded in a “possessive market society” to the individual as the beneficiary of the modern political state that guarantees to each individual some constellation of protections and privileges? Macpherson’s answer is that a theory of political obligation that will stand against—alongside—a theory of political rights must be able to “postulate that the individuals of whom the society is composed see themselves, or are capable of seeing themselves, as equal in some respect more fundamental than all the respects in which they are unequal [Macpherson, 1964].”

Macpherson suggests that in the early days of the possessive market society this condition was fulfilled since all individuals were subject to the same forces of a competitive market—individuals saw themselves as equally subjected to competitive pressures. These circumstances were therefore seen as inevitable—natural. Obviously this is not the same as suggesting universal beneficence, only universally endured. Low prices for things being sold, high prices for things being purchased, and hungry times from drought, pestilential crop failure, disease, marauding soldiers, and cold wet winters wreaked havoc on one and all in rather equal measure. That was life, and it was hard all around. Little wonder that Thomas Hobbes, in 1651, would judge life to be "solitary, poor, nasty, brutish, and short".

Not only were all subjected to the same ubiquitous discomfort, Macpherson reminds us of a certain “cohesion of self-interests” in which the inherent centrifugal forces of a competitive market society could be meliorated and constrained. At the height of possessive individualism in England, this condition was met by the fact that political voice was restricted to what he calls the possessing class. This small class possessed not only most of the material wealth, it also possessed exclusive control over the selection of a succession of rather unpleasant sovereign authorities. These ruling elites perceived their material and political entitlements as reciprocated in their political obligations. Notice the nexus between rights and obligations. By the middle of the 19<sup>th</sup> century this historic convergence began to dissipate under the assault of an advancing liberal state in which the franchise began to spread downward. The emergence of a distinct class consciousness so central to Karl Marx was profoundly corrosive of both the political as well as the material cohesion of English society. The historical inevitability and “normalcy” of competitive market relations—and emerging bitter awareness of their unequal outcomes—added weight to this gradual disintegration. The old order began to rot from within. Once a newly enfranchised working class became aware of plausible alternatives, the former tight cohesion was destroyed forever. Democracy delivered what democracy is—voice to all. With the spread of political voice, the old cohesion was irreparably fragmented and historic market relations were no longer accepted as natural, necessary, or morally compelling.

This dissolution of cohesion coincided with the early years of the emerging public order here in the United States. While our founders drew on the confident certitudes of Lock and the Enlightenment writers, daily life was forged not by those high-sounding ideals but by the rough and tumble of a new economy—and new political machinery—that had to be constructed, *de novo*, in a land defined by Frederick Jackson Turner’s “frontier.” The unfettered market—with

its grotesque materialism—in concert with emerging political processes that often re-capitulated the excesses of 19<sup>th</sup> century England, are as much a part of our history as are the ideals of Locke and Condorcet and Rousseau. What is unmistakable from Macpherson’s thesis is just how destabilizing, how threatening, democracy can be to narrow economic and political privilege.

I will now connect this point to the matter of land. Specifically, mature democracy cannot be understood merely in terms of the affirmation of the rights of individuals. At the core of a fully developed democracy must be found the concept of correlated duties—obligations—on all individuals. Perhaps the pertinent analogue is found in the process of bringing an infant—which is nothing but an ego with a digestive tract—through adolescence and into responsible adulthood. Two-year olds understand demands, adults understand obligations. Grown-up democracy entails a constant balancing of these two ideas. As Mary Ann Glendon argues [1991], American society is still struggling with the ubiquitous “rights talk” of pre-adolescence.

I now turn to a discussion of land and property rights in land.

### III. On Land

*“I am reminded of the apocryphal dialogue between a city fellow and a Wyoming rancher who was shocked to find the interloper building a cabin on a remote corner of the rancher’s vast estate:*

*Rancher: This is my land, what are you doing here?*

*City man: I am building a cabin. Who says it is your land?*

*Rancher: I do.*

*City man: How did you get the land?*

*Rancher: My father left it to me.*

*City man: How did your father get the land?*

*Rancher: His father left it to him.*

*City man: And how did your grandfather get the land?*

*Rancher: He fought the Indians for it.*

*City man: Fine, I’ll fight you for it.”*

[Bromley, 1989, p. 220].

Not only did John Locke inform the general political philosophy of our founders, his ideas of property rights played a role in the emergence of a unique American phenomenon—a culture of rights talk [Glendon, 1991]. Locke’s theory of property rights starts from a mythical state of nature in which God directs man to take dominion over the “un-owned commons” by mixing his labor with it. Having done so, it is then appropriate for the collective authority of the state to grant permanence of control (we call it ownership) over the thing just labored on. The various Homestead Acts (the first in 1862) by which the fledgling American government legitimized the dispossession of indigenous peoples at the hands of European settlers is the practical application of Lockean acquisition. From this arises the inevitable implication that the main obligation of the state thereafter is to protect those who have labored as God commanded. In other words, land justly acquired is land justly held into perpetuity. Locke recognized that as the earth filled up, and as less and less of God’s Commons was available for free expropriation, a certain inconvenience might arise. Locke’s theory of justified acquisition and subsequent justified holding worked only so long as there was “enough and as good” for others. This Lockean proviso brings us to Immanuel Kant.

Kant noticed that rights are not tangible empirical realities but are, instead, noumena. Those things that cannot be apprehended by the senses but are knowable only by the application of reason are known as noumena—they stand opposed to (empirical) phenomena. Kant asked what conditions are necessary in order that an individual might be able to make internal something that is, by its very nature, external? The key notion here is one of belonging—of belonging to. Something external to an individual—a piece of land—is made internal by understanding the idea of belonging to. Here is a concept worth getting hold of. And how is it decided that something external belongs to an individual?

The individual may well declare that some particular object belongs to her. Notice that this is a claim against all others to whom the object might otherwise belong. The speaker clearly wishes, by dint of unilateral proclamation, for something that is external to become internal. Kant recognized that such claims represent negations of the interests and claims of others within the same community. And he suggested that while one individual may indeed announce and display physical possession of something external, this was not the same as having the socially sanctioned authority to make that declaration binding on others who might wish to make internal that very same thing. That is, unless others to whom the possessor directs his assertion are predisposed to respect those claims, the situation is unstable and cannot, therefore, settle the matter once and for all. Kant noticed that it is only from the consent of others that one can make internal that which is clearly external. For if that external thing can belong to anyone within the community, what mental process is necessary for it to become internal (to belong to) any particular member of that community? Why should others willingly accept binding duties on nothing more compelling than the self-serving assertions of those already in possession of something of potential value to others?

Kant said that such assertions are nothing but the affirmation of empirical possession. And by being based on mere possession, they confuse physical control with something much more profound. That more profound circumstance is one that Kant called intelligible possession. We see intelligible possession at work when a community of individuals reaches agreement that indeed it is both right (moral) and good (prudential) that someone among them should be able to make internal something that has hitherto been external. On this account, what is mine depends not on what I say about it being mine. Rather, what is mine becomes mine in virtue of the assertions of all others who, by their declaration, acquiesce in their own disenfranchisement from

the benefits associated with that object or circumstance. Others grant me *possessio noumenon*—I cannot take it for myself.

While Locke provided a basis for justified acquisition and holding of land as long as there is “enough and as good” for others, Locke stopped short of a complete theory of what is to be done when there is not enough and as good for others. That is, Locke developed a theory of acquisition and holding that works best when it is needed least. It is here that Kant insisted that the continued holding of land in the face of scarcity requires something very special. For scarcity raises the specter of deprivation and exclusion if Lockean acquisition and holding works against the interests of others in the community who—in virtue of coming late—find that all of God’s Commons has already been justly acquired. How can one explain (justify) continued holding of land once there is no more of it to be justly acquired?

Contemporary Lockeans have an answer to this question: let the latecomers buy it from those who have justly acquired it (or who have previously purchased it). Or, if others do not like what current owners are doing with their land, pay the owners to stop. We see that once the initial acquisition has been transferred to another individual (for a price), the logic seems compelling and without end—all future acquisitions must be mediated by due consideration to the existing holder of land. And what is transferred in this way is—and must be—precisely what earlier acquirers obtained. Just acquisition and holding continues into perpetuity.

This apparent escape from the grips of scarcity leaves one fundamental issue still to be addressed. What if the current holding by some individuals results in land-use practices that are found to be neither moral nor prudential in the eyes of the larger society? Why, in such instances, should owners be offered money from the public purse to stop using their land in socially unacceptable ways? What is to preclude one or more holders of land from engaging in

social extortion? We see that land justly acquired may evolve into land unjustly held—its current use is no longer moral or prudential. Here Locke joins Kant in admitting that under certain circumstances the presumed beneficial link between acquisition and holding might be severed. Recall that Locke presumed that land justly acquired would be used in a manner that redounded to the benefit of the entire community, and that fact was part of the justification for its acquisition and continued holding. But what if this is not the case?

Kant answered with the proposition that the community itself must determine whether land justly acquired remains justly held. How is this to be done? It is accomplished through reason emerging from a *burgerliche gesellschaft*—a civil society. It is the community itself that sets the standards by which continued holding of justly acquired land remains justified. The alleged coherence and timeless stability of the idea of property rights is obviously undermined.

We are, it would seem, in need of a new theory of holding. Such a theory must offer an explanation (justification) for difficult decisions about just and prudential holdings into the future. In practical terms, this alternative theory must address the issue of what to do when current holdings—even if justly acquired—are found to warrant justified attenuation. And if attenuation is justified then under what circumstances, if any, must compensation for that attenuation be forthcoming from the citizens of the state? Must payment of public funds always be forthcoming for this attenuation? This is the essential “takings” question.

It seems that the static clarity of Locke and Kant requires one more essential ingredient to offer any hope of dynamic coherence. And that missing piece is an evolutionary component that can impel their generally good ideas forward in time. We find that evolutionary idea in what I call volitional pragmatism.

#### IV. On Volitional Pragmatism

If we are to gain clarity with respect to the idea, the concept, and the meaning, of land it will require a new way of thinking about what it is we claim to know about land. The reigning model of how we know what we claim to know is still imprisoned by the false clarity of deduction that has ruled modernism since Rene Descartes came up with the silly idea that we must first empty our heads of everything we know so that we might then become true and reliable observers of—and reporters about—the world out there. According to Descartes, once emptied, the mind can then get in touch with the indubitable laws and axioms alone by which all future knowledge can be leveraged. In contrast, John Dewey had a different idea:

While the content of knowledge is what has happened, what is taken as finished and hence settled and sure, the reference of knowledge is future or prospective. For knowledge furnishes the means of understanding or giving meaning to what is still going on and what is to be done [Dewey, 1916, p. 341].

Or, as the founder of pragmatism argued: “The object of reasoning is to find out, from the consideration of what we already know, something else which we do not know [Peirce, 1877, p. 9]. Pragmatism starts from the premise that the primary purpose of enquiry is to establish the meaning of words and concepts—and this is achieved by paying careful attention to the practical effects that specific ideas and concepts hold for us. The pragmatic maxim holds that:

Consider what effects ...we conceive the object of our conception to have. Then, our conception of these effects is the whole of our conception of the object [Peirce 1934, p. 1].

Let me offer a little help here. Peirce is insisting that the meaning for us (or to us) of specific objects (or concepts) is formulated in terms of the effects that those objects (or concepts) hold for us (or on us). A brilliant sunset affects each of us in different ways, and the

differentially perceived effects of that sunset comprise (constitute) the meaning of the sunset for us. A sunset is nothing but the effects that the sunset holds for us. Notice that different individuals will be differentially affected by the same physical phenomenon—the sunset. The sunset has no essence—it merely has different effects on those who observe it. Some of us will stand in awe of that sunset, while others will see it as nothing more than a signal that it is time to stop doing what they are now doing (plowing a field) and start doing something else (heading home for supper). The sunset has quite different effects on people, and therefore it holds quite different meanings for them.

The pragmatic maxim holds important implications for the idea—the meaning—of property rights in the American experience. Some commentators view property rights as known essences. They will ask such questions as: “does this particular Supreme Court protect—or fail to protect—property rights?” Or, they will ask: “what is the position of this particular Supreme Court with respect to property rights?” Notice that both of these questions start with a prior idea of the nature of property rights, and the investigator then seeks to answer his/her own question by reading carefully, and by parsing, particular legal decisions. Law reviews are full of such exegetical projects. These questions are flawed precisely because they presume (axiomatically) the prior nature and scope of something (property rights) that is the very idea (concept) requiring explanation. It is akin to asking a three-year old if she is “telling the truth.”

The pragmatist has a more promising epistemology. The pragmatist would observe a series of Supreme Court decisions that, on their face, appear to hold quite different implications for the concept (the *a priori* idea) or the meaning of property rights. Candidate land-use cases—the empirical phenomena requiring explanation—might easily include a few of the classic cases of recent memory: *Euclid v. Ambler Realty*, *Teleprompter Co. v. Loretto*, *Hadachek*

*v. Sebastian, Mugler v. Kansas, Penn Central Transportation Co. v. New York City, Agins v. City of Tiburon, Lucas v. South Carolina Coastal Council, Keystone Bituminous Coal Association v. deBenedictis, Nollan v. California Coastal Commission, Pennsylvania Coal C. v. Mahon, Palazzolo v. State of Rhode Island, and Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency.*

To those who are sure they know what “property rights” are, the findings in these cases appear confounding and without logical coherence. As above, these cases are the stuff of long and tortured law review articles in search of some unifying explanatory thread. After all, or so it is thought, the Supreme Court must have some guiding principles by which it resolves property rights disputes. Aren’t there durable legal doctrines that inform decisions in such important cases? On the other hand, the pragmatist, rather than finding these cases perplexing, would use their very “confounding” reality as the starting point—as data—for working out a theory of property rights. Such theory would have as its purpose the working out of the meaning of the idea of “property rights” in the American experience. These cases and their findings are the very Peircean reality that cries out for a theory—an explanation. And there is a plausible explanation for these seeming disparate decisions by the Supreme Court.

The only way to understand the idea of property rights in the American experience is to understand that this term (property rights) is the benediction applied to those settings and circumstances that, when the dust of consideration by various levels of jurisprudence has finally settled, are found worthy of indemnification by the state. Notice that the term property right is not something known axiomatically—something whose essence is clear to us by intuition or introspection before the specifics of a particular legal struggle is joined. Rather, the idea of property rights is arrived at—created—in the process of resolving mutually exclusive “rights

claims” that come before the Supreme Court. The meaning of property rights is not some *a priori* “essence” that awaits discovery in a particular legal scuffle. Rather, property rights are created in the process of resolving disputes originating in conflicting rights claims brought before the courts. As expressed by Supreme Court Justice Robert H. Jackson: “Only those economic advantages are rights which have the law back of them...whether it is a property right is really the question to be answered [*Willow River Power Co.* 324 US 499, 502 (1945)].”

This means that the American judicial system does not seek to discover where the *a priori* property right lies. Rather, courts offer a necessary forum before which, from time to time, conflicting and mutually exclusive rights claims will be brought. When the more compelling rights claim has been determined, the courts will issue a decree to that effect.

Property rights are made, not found.

This recognition follows necessarily from the meaning of “right.” To have a right means that you have been granted the ability to compel the coercive power of the state to come to your assistance against the contrary claims of others. Rights allow an individual to enlist the wondrous powers of the state as your very special ally. The granting of a right by the state (and the courts are but the final arbiters of state action) does not imply passive support by the state. Rather, that grant bestows active assistance for those to whom the state has granted that status of a “right.” That is, the state stands ready to be enlisted in the cause of those to whom it has granted rights. Rights represent an expansion of the capacities of the individual by indicating what one can do with the aid of the collective power.

We must also understand that property is not an object but is instead, a value. When one buys a piece of land (in the vernacular, a “piece of property”) one acquires not some physical object but rather control over a benefit stream arising from that setting and circumstance that

runs into the future. That is why one spends money (one benefit stream) in order to acquire a different benefit stream (a new benefit stream arising from the fact of “ownership”). Notice that the magnitude of that new benefit stream is a function of the legal parameters associated with it—can one build a tall office tower on it, or a mere bungalow? Is it now covered by water 6 months out of the year, and if so, will local ordinances allow it to be drained for some “higher” (that is, a more remunerative) use? The price paid to acquire that new benefit stream is none other than the expected discounted present value of all future net income appropriable from “owning” the thing. This is why property is the value, not the object. And of course, we put together two concepts—property and right—to arrive at the understanding that this pertains to the grant of authority by the state to a person now called an “owner.” That authority promises that the state is a willing participant in the imposition of binding duties on all those in the class of individuals called “non-owner.”

## V. Implications for Environmental Policy

Pragmatism teaches us that one of the core pretensions of possessive individualism is seriously at odds with jurisprudence in America. Robust assertions by landowners concerning what they believe to be their “property rights” are nothing but elaborate bluffs issued in the hope of scaring off threats—real or perceived—to their current favorable situation. The implications are suggestive. Perhaps a community wishes to establish a policy on tear-downs and the spread of McMansions. Perhaps a community wishes to stop the spread of suburbs into green space now occupied by agriculture and/or open-space. Perhaps a community wishes to stop the destruction of trees on private property. Perhaps a community wishes to control the kinds of landscaping that is acceptable for houses and commercial buildings. Perhaps a jurisdiction (say a

state) wishes to regulate the draining of wetlands no longer protected under federal law by the Clean Water Act.

The answer is clear. The courts will sanction each of these actions if there is a clear connection between the actions and the general well being of the community as articulated in some process by that community. We are back to the pragmatist's emphasis on purpose. For what purpose would it be useful to hold those particular beliefs about McMansions, or green space, or protected sunsets? Notice here the connection between democratic processes and community articulation of a particular vision for the future. This is not, to be sure, an exercise in benefit-cost analysis. It is, instead, recognition of the need and the desire for the collective authority to adjust to new priorities, new tastes and preferences, and new threats to desired futures.

Pragmatism teaches is that these desired futures are created out of a process of the human will in action, looking to the future, and deciding how we wish that future to unfold for us [Bromley, 2006]. Landowners observing this process may well see themselves as being victimized by the shifting whims of public sentiment about the purposes of nature. Aren't wetlands for draining? Aren't forests for cutting down? Aren't rivers for damming? Not any more they are not, and it is increasingly unlikely that landowners will be able to manufacture plausible claims for compensation ("takings") as this process continues. Many people imagine that property rights are secure, do not change, and are timeless protections against the state. Those people had better begin to diversify their portfolio. Public policy is collective action in liberation, restraint, and expansion of individual action. That collective action in America occurs in the legislature and the courts. And as collective ideas about what seems better to do with land and related assets continues to evolve, the courts will be less and less likely to order the

expenditure of tax receipts sitting in the public purse to compensate private land owners who appear to be slow learners.

Possessive individualism in all its aggressive manifestations is symptomatic of a democracy that is still in its adolescent stages. Just as adolescents, democracies ultimately evolve to recognize the legitimate tension between rights talk and our collective obligations. Some environmentalists were frightened by the Contract with America of 1994—in which the property rights crowd became rather assertive. And last year, when the eminent domain clause of the Constitution was upheld by a conflicted—indeed confused—Supreme Court in the case of *Sandra Kelo* and the city of New London, Connecticut, there was serious consternation in the halls of right-wing foundations underwriting these types of lawsuits. Actually I am not at all concerned by these by these expressions of outrage. In fact, I am encouraged by them.

I am encouraged by the fact that the most insidious form of power is that which no one notices. Those who really are manipulating the machinery of state for their own advantage are the silent ones. It is only when their machinations are exposed to the light of day that they begin to show signs of public aggression and hostility. Their bellowing and protestations are the very best evidence that they are now threatened. And that threat to their unnoticed political agility is precisely the opening wedge of a democracy still growing up.

At the outset I commented that economics could learn how to become an evolutionary science if it would but learn a few things from pragmatism. I recently published a book developing what I call volitional pragmatism. I will close with just a few observations on that approach.

The economy is always in the process of becoming. All economies are constructed domains of individual and group action. It is the economic institutions that define opportunity

sets—choice domains—for individuals as they go about their daily life. The fundamental economic institution under discussion here—property rights—is at the core of many environmental conflicts. Standard economic accounts see institutions as mere constraints on otherwise harmonious individual action. Some approaches to institutional economics—the “new” institutional economics—suggest that economic institutions emerge spontaneously from the voluntary interaction of economic agents as they go about pursuing their best advantage. This account, attributable to Harold Demsetz, Ronald Coase, and Douglass North, misses the central fact that economic institutions are the explicit and intended result of authoritative agents—sitting as legislators, judges, administrative officers, heads of states, village leaders—volitionally deciding upon working rules and property regimes whose very purpose is to induce behaviors (and hence plausible outcomes) that constitute the sufficient reasons for the institutional arrangements they construct. Volitional pragmatism avoids the static models of standard economics, and the prescriptive consequentialism of the “new” institutional economics. Volitional pragmatism forces us to ask, instead, that we see these emergent and evolving institutions as the reasons for the individual and aggregate behavior their very adoption anticipates. These hoped-for outcomes in the future comprise sufficient reasons for the passing of laws and decrees and administrative rulings which then become instrumental to the realization of desired individual behaviors and thus aggregate outcomes.

My theory builds on: (1) the pragmatism of Charles Sanders Peirce; (2) the classical institutionalism of John R. Commons; (3) the ways of “knowing” attributable to John Dewey, William James, Ludwig Wittgenstein, Friedrich Nietzsche, and Richard Rorty; and (4) the jurisprudence of Oliver Wendell Holmes. Philosophical pragmatism offers a promising theory of

individual action. Volitional pragmatism extends this account to the legislatures and the courts where the legal parameters of a market economy are worked out.

The economy becomes.

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